

The Claim to

- 1) Generating or increasing a cytotoxic T response against an infectious agent or a tumor cell
- 2) by administering a pharmaceutical composition comprising an enterobacterium OmpA protein, or fragment thereof.

see Claim 44 of the Preliminary Amendment of August 16, 2001.

The Office's simplistic interpretation of this advanced method consists of:

"methods of preparing compositions comprising OmpA" see Office Action of October 7, 2003, page 2.

If the Office is going to capriciously limit claim scope, such interpretation must, at least, fulfill the 35 U.S.C. § 101 requirement.

With the Response of March 11, 2004, generic Claim 44 was amended to conform to an accepted U.S. method claim for generating or enhancing a cytotoxic T response and properly recites the active steps of the method. The Applicants amended Claim 44, rewriting the use subject matter, which was appropriate to the basis international application, to method subject matter, which is appropriate to U.S. prosecution. The amendment was submitted to avoid any misunderstanding as to the scope of the instant use, now method, claims. Dependent use/method claims provide additional limitations on this method and certainly not limitations on a process for making a composition. The Applicants respectfully request the Office observance of the above noted procedural guidelines and further consideration of the elected method.

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Accordingly, entry of the previously submitted amendment, reconsideration of all grounds of objection and rejection, withdrawal thereof, and passage of this application to issue are all hereby respectfully solicited.

It should be apparent that the undersigned attorney has made an earnest effort to place this application into condition for immediate allowance. If he can be of

assistance to the Examiner in the elimination of any possibly-outstanding insignificant impediment to an immediate allowance, the Examiner is respectfully invited to call him at his below-listed number for such purpose.

Allowance is solicited.

Respectfully submitted,

THE FIRM OF HUESCHEN AND SAGE

By: 
G. PATRICK SAGE

Dated: June 21, 2004
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Enclosure: Postal Card Receipt

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THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE ANY FURTHER OR ADDITIONAL FEES WHICH MAY BE REQUIRED (DUE TO OMISSION, DEFICIENCY, OR OTHERWISE), OR TO CREDIT ANY OVERPAYMENT, TO DEPOSIT ACCOUNT NO. 08,3220.